

## § 781.71

the Rules of Practice of the Department of Energy Board of Contract Appeals, 10 CFR part 1023, modified as the Board may determine to be necessary or appropriate.

(f) If petitioner alleges that the exclusive or partially exclusive license has tended substantially to lessen competition or to result in undue concentration in any section of the country in any line of commerce to which the technology relates, the petitioner shall have the burden to prove the allegation by a preponderance of evidence.

(g) If petitioner alleges that licensee has failed to accomplish substantial utilization of the invention and has presented sufficient proof, in accordance with paragraph (b) of this section, to justify a hearing on the matter, the licensee shall have the burden to prove, by a preponderance of evidence, that he has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(h) The Board shall make findings of fact and render a conclusion of law with respect to the challenged license. The conclusion of the Board shall constitute the final action of the Department on the matter.

### SPECIAL PROVISIONS

## § 781.71 Litigation.

(a) An exclusive or partially exclusive licensee may be granted the right to sue at his own expense any party who infringes the rights set forth in his license and covered by the licensed patent. Upon a determination that the Government is a necessary party, the licensee may join the Government of the United States, upon consent of the Attorney General, as a party complainant in such suit. The licensee shall pay costs and any final judgment or decree that may be rendered against the Government in such suit. The Government shall have the absolute right to intervene in any such suit at its own expense.

(b) The licensee shall be obligated to furnish promptly to the Government, upon request, copies of all pleadings and other papers filed in any such suit and of evidence adduced in proceedings

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relating to the licensed patent, including but not limited to, negotiations, agreements settling claims by a licensee based on a licensed patent, and all other books, documents, papers and records pertaining to such suit. If, as a result of any such litigation, the patent shall be declared invalid, the licensee shall have the right to surrender his license and be relieved from any further obligation thereunder.

## § 781.81 Transfer of custody.

The Department may enter into an agreement to transfer custody of any patent to another Government agency for purposes of administration, including the granting of licenses pursuant to this part.

## PART 782—CLAIMS FOR PATENT AND COPYRIGHT INFRINGEMENT

### Subpart A—General

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782.1 Purpose.

782.2 Objectives.

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### Subpart B—Requirements and Procedures

782.5 Contents of communication initiating claim.

782.6 Processing of administrative claims.

782.7 Incomplete notice of infringement.

782.8 Indirect notice of infringement.

AUTHORITY: Dept. of Energy Organization Act; sec. 651, 91 Stat. 601, 42 U.S.C. 7261; Atomic Energy Act of 1954; sec. 107(d), 88 Stat. 1241, 42 U.S.C. 5817(d); sec. 161(g), 80 Stat. 443, 42 U.S.C. 2201(g); sec. 172, 62 Stat. 933, 42 U.S.C. 2223; Foreign Assistance Act of 1961, sec. 2356, 75 Stat. 440, 22 U.S.C. 2356; Patents, Invention Secrecy Act; sec. 183, 66 Stat. 4, 35 U.S.C. 183; Judiciary and Judicial Procedure Act, sec. 1498, 62 Stat. 601, 28 U.S.C. 1498.

SOURCE: 45 FR 26950, Apr. 22, 1980, unless otherwise noted.

### Subpart A—General

## § 782.1 Purpose.

The purpose of this regulation is to set forth policies and procedures for the filing and disposition of claims asserted against the Department of Energy of infringement of privately owned rights in patented inventions or copyrighted works.